IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2003

CORAM

THE HONOURABLE MR. JUSTICE K. SAMPATH

W.P.No. 46138 of 2002

M. Veerateswaran .. Petitioner

-Vs-

1. The Deputy Collector cum
Sub-Divisional Executive Magistrate
Revenue (Taluk Ofice)
Karaikal,
Union Territory of Pondicherry.

2. The Inspector of Police
Law and Order
Karaikal
Union Territory of Pondicherry.

3. The Superintendent of Police
Karaikal
Union Territory of Pondicherry.

4. The Executive Engineer
Electricity Board
Karaikal.

5. S.T. Sundaram. .. Respondents

!For Petitioner .. Mr. V. Raghavachari

^For Respondents .. Mr. E. Vijay Anand
for G.P. Pondicherry

For R.5 .. Mr. T.Suseendran

Writ petition filed under Article 226 of the Constitution of
India praying for issuance of a Writ of Mandamus as stated therein.

:O R D E R
The prayer is for a Mandamus to forbear respondents 1 to 3
from giving permission to the fifth respondent for the purpose of playing

microphone in a private temple within the premises bearing Door No.64 Nehru Street, Karaikal, Union Territory of Pondicherry, on the following allegations:
The fifth respondent, a resident of Karaikal, had purchased the property at Door No.64, Nehru Street, and illegally put up a construction and using it as Kalyana Mandapam. He had not obtained a sanctioned plan. The plan originally sanctioned has no connection whatsoever with the construction put up by him. The petitioner has complained to the authorities and they have also initiated legal action to prosecute the fifth respondent. The said construction adjoins the petitioner's compound wall. The fifth respondent has installed an Amman statue. During December and January, he secured permission from respondents 1 to 3 and played music through microphone at odd hours causing immense nuisance to neighbours. The petitioner's family was directly affected on account of the noise emanating from that place. The distance between the temple and the petitioner's house is hardly one foot. The fourth respondent has also given electricity supply to the temple. The third respondent permitted the fifth respondent to play music at odd hours. The fifth respondent did not adhere to the timings. There is unabated nuisance caused. During the previous year, the petitioner had given objection, but, the same was rejected by the first respondent. The fifth respondent was instructed to follow the timings and to reduce the volume to the barest minimum. The directions were not followed. The Tamil Nadu Legislature has also passed a legislation regulating the use of sound amplifiers in public places. Any violation of the licence conditions should result in cancellation of licence. However, so far as Union Territory of Pondicherry is concerned, to the knowledge of the petitioner, no legislation corresponding to the provisions of the Madras City Police Act has been passed. The fifth respondent had deliberately turned the microphone facing the petitioner's house and caused great nuisance and harassment to the petitioner's family. The petitioner has an aged mother, who is unable to bear the nuisance on account of the noise. There is no law or principle that mandates playing of music in temples, and that too, film songs. In these circumstances, the writ petition has been filed.

2. The respondents have been served.

3. The fifth respondent has filed a detailed counter stating inter alia as follows:
The petitioner has suppressed the material facts with mala fide intention to prevent the fifth respondent from doing his lawful business in running the Kalyana Mandapam. The fifth respondent obtained an approved plan in Plan No.604/kpa/98, dt.17.3.1999 from the Chairman and the Member-Secretary of Karaikal Town Planning authority for putting up a Kalyana Mandapam. He constructed as per the approved plan and completed the work in 2001. At the time of construction, nobody objected to the sanction. The writ petitioner is residing at 219, Church Street, Karaikal. The microphone is in Door No.62, Nehru Street, which is on the south-east of the petitioner's property. The fifth respondent purchased the property bearing Old Door No.218, lying immediately on the south of Door No.219, owned by the writ petitioner, and on the west of the Kalyana Mandapam put up by him. There arose a litigation between the writ petitioner and the vendor of the fifth

respondent, and the same is still pending. The fifth respondent, as Power of Attorney of his vendor, is handling the litigation. The petitioner was enraged by purchase of the property by the fifth respondent and putting up of construction, and his pursuing the litigation. The petitioner sent telegrams dt.22.10.2001 and 24.10.2001 to the Town Planning Authority, containing false allegation that the Kalyana Mandapam had been put up in violation of the approved plan. Complaints were also made after completion of the construction work. The Planning Authority sent a letter dt.24.5.2001 stating that the construction had been going for more than 2+ years, that the construction was almost over, and that there was no violation in putting up the construction and therefore the construction could not be stopped. The petitioner suppressed the above facts and filed W.P.No.1859 of 2002 for a direction to the Karaikal Town Planning Authorities to remove the alleged illegal construction made, violating the Country Planning and Regulations. On 31.1.2002, this Court passed an order directing the Member-Secretary, Karaikal Town Planning Authority, to inspect the premises and dispose of the representation made by the writ petitioner within four weeks from the date of receipt of a copy of the order. On 26.3.2002, the Planning Authority sent a communication to the petitioner informing him that a reply would be furnished within seven days in consultation with the Committee Members. Without awaiting the reply, the petitioner filed O.S.No.26 of 2002 before the Additional District Judge, Karaikal, for a mandatory injunction, directing the Karaikal Town Planning Authorities to remove the construction alleged to be in deviation of the approved plan. The Additional District Judge, Karaikal, without considering the bar of Civil Court's jurisdiction provided under Section 75 of the Pondicherry Town and Country Planning Act, 1959, entertained the suit, and on the very same day passed orders in I.A. 80 of 2002, granting an order of injunction restraining the Town Planning Authorities from giving 'No Objection Certificate' for running the Kalyana Mandapam. The fifth respondent approached this Court in CRP No.858 of 2002 under Article 227 of the Constitution of India for striking off the suit as an abuse of process of Court. The Civil Revision Petition was allowed on 2.12.2002 and the suit was struck-off on the same day. Immediately thereafter, on 16.12.2002, the present writ petition has been filed with an ulterior motive. While the main prayer is for a relief preventing the fifth respondent from playing microphone in respect of private temple located at Door 64, Nehru Street, Karaikal, the interim injunction is sought for against installation of microphone and also public address system in the entire premises at Door No.64, Nehru Street. This would clearly prove the intention of the petitioner to prevent the fifth respondent from making use of his lawfully constructed premises as a Kalyana Mandapam. Subsequent to the disposal of the Civil Revision Petition, the Town Planning Authorities, Karaikal, have given 'No Objection Certificate' for running a Kalyana Mandapam at No.62, Nehru Street, Karaikal. The fourth respondent is going to provide the fifth respondent a power supply service connection to the Kalyana Mandapam shortly. At this stage, taking advantage of the blanket interim order obtained from this Court, the writ petitioner is giving a wide publicity in Karaikal region that the fifth respondent has been prevented from using mike and loudspeakers in OM SAKTHI THIRUMANA MANDAPAM. Based on this, the persons who have already reserved the petitioner' s Kalyana Mandapam for performing marriages, are making enquiries and contemplating to change the venue. Earlier in M.C.No.158 of 2001, the first respondent by

order dt.31.12.2001 held that there was no public nuisance in the grant of permission to the fifth respondent by the second respondent herein to use loudspeakers for Amman Temple from 16.12.2001 to 16.1.2003 between 6.00 and 7.30 hrs., and instructions were given to the fifth respondent to follow the timings and lessen the volume of the loudspeakers. The second respondent was also directed to keep a vigil on the fifth respondent and see that he followed the timings and reduction of sound in blaring the loudspeakers. The fifth respondent has followed the instructions given to him by the first respondent. Thereafter, there was no complaint at all.

Though, originally the fifth respondent had not obtained sanction in the planing permission for construction of a small worship place near the Kalyana Mandapam while construction was going on, he thought of constructing an Amman Temple measuring 4' x 10' near the Kalyana Mandapam, so that people performing their marriages could have their prayer before the Amman at the time of marriages. The fifth respondent also subsequently applied for the revised plan showing the temple, and the same also has been approved. The fifth respondent is not at all interested in playing music in the private temple and so, he need not apply for permission from respondents 2 to 4 for the purpose of playing microphone in the private temple. If at all such a permission is required, he will apply for the same after obtaining necessary direction from this Court. He undertakes that he will not apply for permission from respondents 2 to 4 for the purpose of playing microphone in the private temple, within the premises bearing Door No.64 , Nehru Street, Karaikal, Union Territory of Pondicherry, and this could be recorded by this Court. There are no merits in the writ petition and the same may be dismissed.

4. Though the scope of the petition is rather limited, having regard to the high incidence of aural aggression it has become necessary to deal with the subject rather elaborately.

5. Under our Constitution, we have solemnly resolved to secure to all the citizens liberty of thought, expression, belief, faith and worship, besides social, economic and political justice, equality of status and of opportunity and to promote fraternity assuring the dignity of the individual and the unity and integrity of the Nation.
Article 14 postulates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth subject to some 'bias' in favour of women, children and citizens belonging to BCs, SCs and STs.
The relevant portion of Article 19 runs as follows:
(1) All citizens shall have the right:-
(a) to freedom of speech and expression
(b) to assemble peaceably and without arms
(c) to form associations or unions
(d) to move freely throughout the territory of India.
(e) to reside and settle in any part of the

territory of India.
(f) [omitted by S.2 of the Forty fourth amendment Act, 1978]
(g) to practise any profession, or to carry on any occupation, trade or business.

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.].
(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of [the sovereignty and integrity of India.4 or] public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or].4 public order or morality, reasonable restrictions on the exercise of the right conferred by the said subclause.

(5) Nothing in [sub-clauses (d) and (e)].5 of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said subclauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said subclause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

6. In ROMESH THAPPAR v. STATE OF MADRAS [AIR 1950 SC 124 : 1950 SCR 594] the Supreme Court observed that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. It goes without saying that this circulation could be by word of mouth, in writing or through audio visual instrumentalities that is

to say through print media as well as through radio and television.

7. More often than not, citizens who claim protection of their rights regarding freedom of speech and expression, close their faculties to sub-clause (2) which provides that the said rights are subject to restrictions on grounds of public order, decency, morality or other public interests which may be compendiously described as social welfare [HARI KHEMU GAWALI v.. DCP [AIR 1956 SC 559]. As pointed out by DAS, J. in A.K. GOPALAN v.. STATE OF MADRAS, AIR 1950 SC 27, individual liberty will have to be subordinated to other greater social interests. It has been pointed out in MRF LTD. v.. INSPECTOR, KERALA GOVERNMENT, (1998) 8 SCC 227, that the Directive Principles of State Policy have to be kept in mind by the Court while considering the reasonableness of the restrictions though one member of the Constituent Assembly characterised the Chapter on Directive Principles as "a veritable dustbin of sentiment", and that the said restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public. There must be just balance struck between the restriction imposed and the social control envisaged; the prevailing social values as also social needs which are intended to be satisfied by restrictions imposed have to be borne in mind; and there must be a direct and proximate nexus or a reasonable connection between the restrictions imposed a nd the object sought to be achieved.

8. In FATEHGARH v. Dr. RAM MANOHAR LOHIA [AIR 1960 SC 633] it has been observed by the Supreme Court as follows:-
"... the wide concept of "public order" as used in English and American laws has been split up in Article 19(2) under several heads. ..... some of the topics mentioned in clause (2) would, under the American and the English laws, come within the concept of "public order", but that, having regard to the fact that these subjects have also been separately mentioned in the same clause, they cannot be included in the expression "public order".
Ultimately, the Supreme Court held -
"..... the expression "public order" was used in a limited sense and that "it can be postulated that "public order" is synonymous with public peace, safety and tranquillity". .... in order to justify a piece of legislation on the ground of its being "in the interest of public order", there must be a proximate connection between the restriction and the fulfilment of the public order and that a remote or a fanciful connection between the two cannot sustain its validity."

9. It is now time to refer to Article 21 which runs as follows:
"No person shall be deprived of his life or personal liberty except according to procedure established by law."

10. As pointed out by FIELD, J. in MUNN v.. ILLINOIS [(1876) 94 US 113 : 24 Law Ed.77] referred to in KHARAK SINGH v.. STATE OF U. P. [AIR 1963 SC 1295] -
"By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limits

and faculties by which life is enjoyed ...."

11. The expression "personal liberty" in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19. It extends to pollution and environmental matters as well.

12. Noise Pollution is a very serious menace that the people are facing. Loudspeakers, heavy and light vehicles, three wheelers and two wheelers without silencers and impatient honking of horns are the main sources of the malady. A.G.GARDINER in his lively piece "On the Rule of the Road" with particular reference to horns says -
"When I hear the aggressive, bullying horn which some motorists deliberately use, I confess that I feel something boiling up in me which is very like what I felt when Germany came trampling like a bully over Belgium. By what right, my dear sir, do you go along our highways uttering that hideous curse on all who impede your path? Cannot you announce your coming like a gentleman? Cannot you take your turn? Are you someone in particular or are you simply a hot gospeller of the prophet Nietzsche? I find myself wondering what sort of person it is who can sit behind that hog-like outrage without realising that he is the spirit of Prussia incarnate, and a very ugly spectacle in a civilised world."

13. In RABIN MUKHERJEE v. STATE OF WEST BENGAL [AIR 1985 CALCUTTA 222] the Calcutta High Court was dealing with the mandatory provision as provided in R.114(d) of the Bengal Motor Vehicles Rules, 1940 that each transport vehicle namely stage carriages which include private buses, and State Buses, contract carriers, mini buses, lorries etc. Could not be fitted with any other form of horn excepting a bulb horn. But no transport vehicle owner followed such Rule and the transport vehicles were using electric and air horn in reckless manner. It was observed by the High Court that in a congested State like the State of West Bengal, sudden blowing of such horn by transport vehicles produced rude shock in the human system and was acknowledged to have serious effect on various aspects of human life including blood pressure, mental and nervous system. "It is also matter of common knowledge that such transport vehicles even for overtaking another vehicle on the road small or big continuously blow such electric and/or air horn which produces a shrill and loud noise and which creates annoyance to everyone who resides by the side of the road and to all pedestrians including the persons travelling in the vehicles. The indiscriminate use of such horn is amounting to noise pollution in the city of Calcutta and the congested areas of the State of West Bengal and that the same have adverse effect on the public health of the people which creates many a complication including mental restlessness, blood pressure and heart trouble and it is necessary in the interest of the public at large in the State of West Bengal to stop such noise pollution arising out of unnecessary use of such electric and air horn deliberately. The transport authorities are under a statutory obligation and duty under S.112 of the Motor Vehicles Act to punish the person who contravenes the provision of R.114(d) of the Rules."

14. Noise, it is common knowledge, has adverse effect on the public health of the people and as pointed out in PA JACOB v.. THE SUPERINTENDENT OF POLICE, AIR 1993 KERALA 1 -
"Exposure to high noise, is a known risk and it is proved to cause bio-chemical changes in man, elevating levels of blood catecholamine, cholesterol, white cell counts and lymphocytes. Laboratory studies made by monitoring electro encephalo graphic (EEG) responses and changes in neurovegetative reactions reactions during sleep, show that disturbance of sleep becomes increasingly apparent as ambient noise levels exceed about 35 dB(A) Leq. noise produces different reactions along the hypothalamohypophyseal-adrenal axis, including an increase in adenocorti-cotropic hormone (ACTH), affecting sympathetic division of the autonomic nervous system. Eye dilation, bradycardia, and increased skin conductance are proportional to the intensity of noise above 7 0 dB. SPL. incidence of peptic ulcer is high among noise exposed groups. Noise causes contraction of the flexor muscles of the limbs and the spine, and is reckoned as an environmental stress that could lead to non-specific health disorders. Exposure to high noise in every day life may contribute to eventual loss of hearing (socio-acusis), and this in turn can affect speech communication. Vasoconstruction or vasodilation of blood vessels also is induced by high levels of noise during acute exposures (Rosecrans et al (1966)). Complaints of nystagmus (rapid voluntary side to side movements), Vertigo (dizziness) and balance problems have also been reported due to noise exposure. 'WHO' criteria 12 and Indian Standards 1-S-1954 indicate tolerance levels. J.E. Park and K. Park 'Text Book of Preventive and Social medicine', 7th Edn. page 201, also specifies tolerance limits of noise."

15. Let us move on to loudspeakers -

16. In the case before the Supreme Court of the United States - SAMUEL SAIA v. PEOPLE OF THE STATE OF NEW YORD [92 LAW. ED.1574 : 334 US 558], a municipal ordinance prohibited the use of amplifying devices casting sound upon streets and public places, except with the permission of the chief of police, without prescribing standards for the exercise of his discretion. A majority of the court, led by DOUGLAS, J., thought that it violated the constitutional right of free speech. However, FRANKFURTER, J. with whom REED and BURTON, J.J. concurred, characterised amplifying devices as affording "too easy opportunities for aural aggression," and thought that the constitutional right of free speech does not require denial of the right of a state to so control amplifying devices as to safeguard the rights of others not to be assailed by intrusive noise. Referring to the fact that in the instant case permission to broadcast from a sound truck a religious lecture in a public park was refused because of complaints consequent upon a previous permit, and to the absence of a showing of arbitrary action or discrimination, he thought that it was not beyond constitutional limits to refuse a licence for the time and place requested.
JACKSON, J., also dissented on the ground that society has the right to control as to place, time, and volume the use of loud-speaking devices for any purpose provided its regulations are not unduly arbitrary, capricious, or discriminatory and that under the circumstances of the case the refusal of the permit was neither unreasonable nor discriminatory.

In that case, the appellant was a Minister of the religious sect known as Jehovah's Witnesses. He obtained permission from the Chief of Police to use sound equipment, mounted atop his car, to amplify lectures on religious subjects. The lectures were given at a fixed place in a public park on designated Sundays. When this permit expired, he applied for another one but was refused on the ground that complaints had been made. Nevertheless, he used his equipment as planned on four occasions, but without permission. He was tried in Police Court for violations of the ordinance. It was undisputed that he used his equipment to amplify speeches in the park and that they were on religious subjects. Some witnesses testified that they were annoyed by the sound, though not by the content of the addresses; others were not disturbed by either. The Court upheld the ordinance against the contention that it violated appellant's rights of freedom of speech, assembly, and worship under the Federal Constitution. Fines and jail sentences were imposed. His convictions were affirmed without opinion by the County Court for Niagara County and by the New York Court of Appeals. The aggrieved Minister moved the United States' Supreme Court. As already mentioned, the majority held that the relevant Section was unconstitutional as it established a previous restraint on the right of free speech in violation of the First Amendment which was protected by the Fourteenth Amendment against State action.

"Loud-speakers are today indispensable instruments of effective public speech. The sound truck has become an accepted method of political campaigning. It is the way people are reached. Must a candidate for governor or the Congress depend on the whim or caprice of the Chief of Police in order to use his sound truck for campaigning? Must he prove to the satisfaction of that official that his noise will not be annoying to people?"

"Ordinance in question would be a dangerous weapon if it were allowed to get a hold on the public life. Noise can be regulated by regulating decibels. The hours and place of public discussion can be controlled. But to allow the police to bar the use of loud-speakers because their use can be abused is like barring radio receivers because they too make a noise. The police need not be given the power to deny a man the use of his radio in order to protect a neighbour against sleepless nights.

Any abuses which loud-speakers create can be controlled by narrowly drawn statutes. When a city allows an official to ban them in his uncontrolled discretion, it sanctions a device for suppression of free communication of ideas. In this case a permit is denied because some persons were said to have found the sound annoying. In the next one a permit may be denied because some people find the ideas annoying. Annoyance at ideas can be cloaked in annoyance at sound. The power of censorship inherent in this type of ordinance reveals its vice."

"Courts must balance the various community interests in passing on the constitutionality of local regulations of the character involved here. But in that process they should be mindful to keep the freedoms of the First Amendment in a preferred position."

However, the dissenters observed as follows:

"The native power of human speech can interfere little with the self-protection of those who do not wish to listen. They may easily move beyond earshot, just as those who do not choose to read need not have their attention bludgeoned by undesired reading matter. And so utterances by speech or pen can neither be forbidden nor licensed, save in the familiar classes of

exceptional situations..... But modern devices for amplifying the range and volume of the voice, or its recording, afford easy, too easy, opportunities for aural aggression. If uncontrolled, the result is intrusion into cherished privacy. The refreshment of mere silence, or meditation, or quiet conversation, may be disturbed or precluded by noise beyond one's personal control..... The State was entitled to authorize the local authorities of Lockport to determine that the well-being of those of its inhabitants who sought quiet and other pleasures that a park affords, outweighed the appellant's right to force his message upon them. Nor did it exceed the bounds of reason for the chief of police to base his decision refusing a license upon the fact that the manner in which the license had been used in the past was destructive of the enjoyment of the park by those for whom it was maintained. That people complained about an annoyance would seem to be a pretty solid basis in experience for not sanctioning its continuance.....
It is not unconstitutional for a State to vest in a public official the determination of what is in effect a nuisance merely because such authority may be outrageously misused by trying to stifle the expression of some undesired opinion under the meretricious cloak of a nuisance. Judicial remedies are available for such abuse of authority, and courts, including this Court, exist to enforce such remedies."

"We are dealing with new technological devices and with attempts to control them in order to gain their benefits while maintaining the precious freedom of privacy. These attempts, being experimental, are bound to be tentative."

JACKSON, J. observed:

"It is astonishing news to me if the Constitution prohibits a municipality from policing, controlling or forbidding erection of such equipment by a private party in a public park. Certainly precautions against annoyance or injury from operation of such devices are not only appropriate, but I should think a duty of the city in supervising such public premises. And a very appropriate means to supervision is a permit which will inform the city's police officers of the time and place when such apparatus is to be installed in the park. I think it is a startling perversion of the Constitution to say that it wrests away from the states and their subdivisions all control of the public property so that they cannot regulate or prohibit the irresponsible introduction of contrivances of this sort into public places."

The learned Judge referred to the words of HUGHES, CJ:

"Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

17. In CHARLES KOVACS v. ALBERT COOPER, JR., [93 L ED 513 : 336 US 77] it was held that a city ordinance prohibited the operation upon the streets of sound amplifiers or other instruments which emitted "loud and raucous noises" and were attached to vehicles operated or standing upon such streets. A conviction for a violation of this ordinance, affirmed by the state appellate courts, was further affirmed by a majority of the Supreme Court of the United States as against the objections that the ordinance was lacking in definiteness and that it infringes upon the constitutional right of free speech.

Eight members of the Court - all except MURPHY, J., agreed that sound amplification in streets and public places is subject to reasonable regulation, and, at least, did not disagree that an ordinance prohibiting the emission of "loud and raucous noises" does not go beyond reasonable regulation. Two of the eight - FRANKFURTER and JACKSON, JJ. - go further, holding that the use of sound trucks in streets may be absolutely prohibited without violating the constitutional right of free speech.
BLACK, J., joined by DOUGLAS and RUTLEDGE, JJ., dissent from affirmance of the case on the ground that the defendant was charged with and convicted of operating a sound truck, without allegation or proof that it was emitting "loud and raucous noises."
To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself.
Mr. JUSTICE FRANKFURTER observed as follows:
Wise accommodation between liberty and order always has been, and ever will be, indispensable for a democratic society. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets.
So long as a legislature does not prescribe what ideas may be noisily expressed and what may not be, nor discriminate among those who would make inroads upon the public peace, it is not for us to supervise the limits the legislature may impose in safeguarding the steadily narrowing opportunities for serenity and reflection. Without such opportunities freedom of thought becomes a mocking phrase, and without freedom of thought there can be no free society.

18. In ARTHUR FRANCIS vs.. CHIEF OF POLICE [1973 A.C. 761]
- the appellant was charged with using a noisy instrument during the course of a public meeting without permission from the Chief of Police, contrary to section 5 of the Public Meetings and Processions Act 1969. He admitted the fact of using a loudspeaker without the permission of the Chief of Police, but contended that section 5 of the Act of 196 9 was ultra vires the Constitution in that it curtailed his fundamental right of freedom of communication contained in section 10 of the St. Christopher, Nevis and Anguilla Constitution Order 1967. The magistrate referred for the determination of the High Court the question whether section 5 of the Public Meetings and Processions Act 1969 offended against section 10 of the Constitution. The High Court held that section 5 of the Act did not infringe the fundamental rights and freedoms guaranteed by section 10 of the Constitution and their decision was affirmed by the Court of Appeal.
On appeal by the appellant to the Judicial Committee:- it was held, dismissing the appeal, that the control of loudspeakers at public meetings by section 5 of the Act of 1969 was not contrary to section 10 of the Constitution, for public order required that the public, who did not wish to hear the speaker, be protected from any excessive noise.
Per curiam. A wrongful refusal of permission to use a loudspeaker at a public meeting (for instance if the refusal is inspired by political partiality) would be an unjustified and therefore unconstitutional interference with freedom of communication.

The Privy Council referred to decisions of our Courts, in particular to the following:
GOPALAN v. STATE OF MADRAS [1950] SCR 88.
" 'Liberty', says John Stuart Mill, 'consists in doing what one desires. But the liberty of the individual must be thus far limited - he must not make himself a nuisance to others." Man, as a rational being, desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals. Liberty has, therefore, to be limited in order to be effectively possessed." [PATANJALI SASTRI, J.]
"What the Constitution, therefore, attempts to do in declaring the rights of the people is to strike a balance between individual liberty and social control."

19. Lord PEARSON, who delivered the judgment of the Privy Council in FRANCIS v. CHIEF OF POLICE [(1973) 2 All ER 251] said that the two conflicting considerations to be reconciled are the differing opinions delivered in the United States Supreme Court in SAIA v. NEW YORK [(1948) 334 US 558] and KOVACS v. COOPER [(1949) 336 US 77].

After noticing the two differing opinions of the United States Supreme Court Lord Pearson said:
"The American judgments show the principles and policy considerations involved, but may not be a guide to the detailed construction of Section 10 of the Constitution of the State of St. Christopher Nevis and Anguilla, because the First and Fourteenth Amendments have no provision corresponding to Section 10(2). The American Judges look for the inherent limitations which there must be in the fundamental freedoms of the individual if the freedom of others and the interests of the community are not to be infringed. There are two ways of construing Section 10. One way is to read into sub-section (1) the necessary limitations as inherent in the fundamental freedoms of expression and communication. The other way is to look first at sub-section (1) to see whether according to the literal meaning of the words there is a prima facie hindering of or interference with the freedoms of expression and communication, and, if there is, look on to sub-section (2) to see whether such hindering or intercourse is justifiable. If the second way is adopted, the phrase 'public order' must be given a meaning wide enough to cover action taken for the avoidance of excessive noise seriously interfering with the comfort or convenience of a substantial number of persons. The phrase would of course cover action for the avoidance of any behaviour likely to lead to a breach of the peace, and perhaps excessive noise can be brought under that heading.
Whatever may be the exact construction of Section 10, it must be clear that (1) a wrongful refusal of permission to use a loudspeaker at a public meeting (for instance if the refusal is inspired by political partiality) would be an unjustified and therefore unconstitutional interference with freedom of communication, because it would restrict the range of communication, and (2) some regulation of the use of loudspeakers is required in order that citizens who do not wish to hear what is said may be protected against 'aural aggression' if that might reach unbearable intensity."

20. In RAJNI KANT VERMA v. STATE [AIR 1958 ALLAHABAD 360] it has been held that use of mechanical instruments like loudspeakers and amplifiers is not covered by the guarantee of freedom of speech and expression. The learned Judge further held that a bye-law of a municipality which requires permission of the Executive Officer for using a loud-speaker does not infringe Art.19 (1)(a) of the Constitution.

21. In INDULAL K. VAGNIK v.. STATE, AIR 1963 GUJARAT 259, the use of loudspeakers was being considered. The learned judge observed as follows:
..... In order that disorder may not take place on account of the user of loudspeakers, it is quite obvious that the authorities concerned must have previous knowledge about the persons who are to make use of loudspeakers, and the times and the places at which they are to be used. This previous knowledge can be acquired only if a system of licensing is introduced, so that, when an application for licence comes to be made, the authorities may come to know beforehand who intends to make use of the loudspeaker, at what time and place, and under what circumstances. This would give the authorities a chance to consider whether any disturbance of public peace or tranquillity is or is not likely to arise by the use of the loudspeaker at a particular time and place, and, if there is any such danger, what measures they must take for the preservation of public peace and order. Then it will be the duty of the officer to consider whether he should prohibit the use of the loudspeakers absolutely or whether he should only control the same."

22. In D. ANANTHA PRABHU v. THE DISTRICT COLLECTOR, ERNAKULAM [ AIR 1975 KERALA 117] it has been stated as follows: -
"Freedom of speech and expression connotes freedom of audience to receive ideas and information without any interference and obstruction and freedom of the speaker or the person who wants to express his ideas and opinions to speak or express himself in such a way that his ideas and opinions are effectively communicated to the audience. But at the same time the State can regulate the use of loudspeakers and mechanical or other contrivances to amplify sound. How far such regulation can go is entirely a different question."

23. In MADHU LIMAYE vs.. D.M.MONGHYR [AIR 1971 SC 2486] where the phrase 'public order' was equated with 'order publique' plus absence of all acts which are a danger to the security of the State, it was held that the question whether excessive noise could always be classified as not conducive to 'public order' required further scrutiny and study. The Court observed:
".... that the overlap of public order and public tranquillity is only partial. The terms are not always synonymous. The latter is a much wider expression and takes in many things which cannot be described as public disorder. The words 'public order' and 'public tranquillity' overlap to a certain extent but there are matters which disturb public tranquillity without being a disturbance of public order. A person playing loud music in his own house in the middle of the night may disturb public tranquillity, but he is not causing public disorder. 'Public order' no doubt also requires absence of disturbance of a state of serenity in society but it goes further. It means

what the French designate order publique, defined as an absence of insurrection, riot, turbulence, or crimes of violence. The expression 'public order' includes absence of all acts which are a danger to the security of the state and also acts which are comprehended by the expression 'order publique' explained above but not acts which disturb only the serenity of others."
"Denial of right to use mikes and loudspeakers on the basis of the opinion formed or decision taken not to grant such permission 'except in exceptional circumstances' is in such circumstances violative of Art.14 of the Constitution."

24. In P.A. JACOB v.. THE SUPERINTENDENT OF POLICE [AIR 1993 KERALA 1], already referred to, it has been stated as follows:
"The right to speech implies, the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends freedom to be free from what one desires to be free from. Free speech is not to be treated as a promise to everyone with opinions and beliefs, to gather at any place and at any time and express their views in any manner. The right is subordinate to peace and order. A person can decline to read a publication, or switch off a radio or a television set. But, he cannot prevent the sound from a loudspeaker reaching him. He could be forced to hear what , he wishes not, to hear. That will be an invasion of his right to be let alone, to hear what he wants to hear, or not to hear, what he does not wish to hear. One may put his mind or hearing to his own uses, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. A loudspeaker is a mechanical device, and it has no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right belongs to human personality, and not to a mechanical device. One may put his faculties to reasonable uses. But, he cannot put his machines to any use he likes. He cannot use his machines to injure others. Intervention with a machine, is not intervention with, or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or a robot cannot be conceded the rights under Art.19 (though they may be useful to man to express his faculties). No more, a loud speaker. The use of a loudspeaker may be incidental to the exercise of the right. But, its use is not a matter of right, or part of the right."
"..... in the matter of denying the use of a loudspeaker, Police cannot act arbitrarily. All State action is amenable to Art.14. If the authority charged with the power to regulate use of loud speakers under the Kerala Police Act, acts beyond the authority law confers upon him, his action is liable to be interdicted."
"Apart from the right to be let alone, - freedom from aural aggression - Article 21 guarantees freedom from tormenting sounds. What is negatively the right to be let alone, is positively the right to be free from noise.
.....
Sound levels generally caused by loudspeakers transgress safe limits by a wide margin. Loud speakers have become part of political, social, religious and cultural life of this country. To allow advocates of various persuasions to commit unlimited aural aggression on unwilling listeners, would be to allow them to subjugate the right of life of unwilling listeners, to their aggressions. Protests made by sufferers like the student community or

sick, generally fall on heedless ears. Very recently, the 'Malayala Manorama' (5-5-1992) came out with an editorial against noise pollution. The Indian Medical Association is reported to have protested against high noise output through loudspeakers, pointing out the risks..... (Malayala Manorama 21-5-1992, Mathrubhumi dt.21-5-1992). Compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their constitutional guarantee of right to life under Article 21. Right to life, comprehends right to a safe environment, including safe air quality, safe from noise."

25. In APPA RAO v.. GOVERNMENT OF TAMIL NADU, 1995 (1) LW 319, Writs of Mandamus for directing the State Government to impose strict conditions for issue of licence for use of amplifiers and loudspeakers and for directing Director General, Police (Law and Order) to impose total ban on use of horn type loudspeakers and amplifiers and air horns of automobiles were sought. After referring to the provisions of Madras City Police Act (1888), Madras Towns Nuisance Act (1989), Tamil Nadu Motor Vehicles rules, Central Motor Vehicles act and Rules, Tamil nadu Police Act and the relevant G.Os. as also several decisions of various Courts, the Division Bench gave certain guidelines. G. O.Ms.No.3485, dt.29.12.1977 and the guidelines are extracted below:
(1) Wide publicity to G.O.Ms.3485, dt.29.12.77 with Annexure, published in the English and Tamil Dailies;
(2) Conditions set out in Annexure to be in the form of application for license to use loudspeakers or amplifiers;
(3) Such conditions shall also be set out in the licence granted by authorities;
(4) Both in the form of an Application and the licence, warning about consequences of violation of any condition to be set out; and
(5) A separate cell to be set up in the Office of the Commissioner of Police and superintendent of Police in each district, to receive complaints against violation of conditions.

Conditions for grant of loudspeaker licence, as set out by the Bench, are as follows:
(1) Amplifiers can be used only between 9 A.M. To 10.30 P.M. and for 3 hours at a time. The duration of 3 hours is relaxable under special circumstances.
(2) No extension speaker should be put up outside the premises for which the licence is issued. Relaxable in the case of temples, churches and mosque on some occasions.
(3) Only Box type speaker should be used.
(4) The volume should be such low that it is not heard outside the premises.
(5) If any misuse is noticed licence will be cancelled.
(6) The installation of loudspeakers and mike sets for which the licence is issued should be done only by an electrical contractor having at least a valid "B" Contractor's licence issued by the Electrical Licensing Board of the State and operated only by a person having a wiremen competency

certificate issued by the Electrical licensing Board. Non compliance of the condition is not only punishable under the Madras City Police Act but also under the Indian Electricity Rules, 1 956 for violation of Rule 36 thereof.
(7) No sound amplifier shall face and no person shall use a sound amplifier, within (prescribe) the limits of hospital, place of worship or an educational institution.
(8) Any Police Officer on duty above the rank of Head Constable may require any party to stop using or remove any sound amplifier the using of which, may be a nuisance or cause obstruction and it shall be stopped or removed as the case may be immediately.
(9) Any Police Officer on duty above the rank of Head Constable may seize any sound amplifier or other instrument used in amplifying which has been or appears to have been used in contravention of any of the conditions stipulated.
(10) Loudspeakers should not be allowed to be installed on towers and temple walls, churches and mosques, so as to face the surrounding streets and areas, should be installed within the precincts and turned inwards so that the music is audible only within the precincts of the temple/church/mosque. Exemption will be given during the month of Ramzan when the calls of the Muazzine for prayers is traditionally made from the mosque tower."
This decision has been approved by the Supreme Court in CHURCH OF GOD IN INDIA v.. K.K.R. MAJESTIC COLONY WELFARE ASSOCIATION [AIR 20 00 SC 2773 : 2000 (7) SCC 282].
That was an appeal against the decision of a learned single judge (AKBAR BASHA KHADIRI, J.) of this Court in a criminal original petition, filed by a Welfare Association, invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, directing the police - the Superintendent of Police and the Inspector General of Police to take action against the sixth respondent/the appellant before the Supreme Court to abate noise pollution. The details are as under:
"The appellant was a minority, denominational Church against whom complaints had been lodged by the respondent welfare association for causing noise pollution during the course of their regular prayer service. It was undisputed that the Church used loudspeakers, drums and other instruments during prayers. The Joint Chief Environmental Engineer of the Tamil Nadu Pollution Control Board on 23.5.1996 wrote to the Superintendent of Police concerned directing him to take action on the complaint; on 12.6.1996, he wrote again to the Superintendent and enclosed the analysis report of the ambient noise level survey, which had been conducted in the neighbourhood of the appellant Church. The report indicated that the vehicles plying on the nearby main road were significant contributors to the high noise level.
On behalf of the Church it was contended that the petition was a motivated one, aimed at disrupting the religious activities of a minority religious institution. It was also pointed out that much of the noise was contributed by vehicular traffic nearby. This Court relying on Appa Rao's case (supra) directed the police to take the steps necessary to reduce the noise level to the extent permitted under the guidelines laid down in Appa Rao's case. The police was also directed to take action in respect of the vehicles and also to ensure that the Church loudspeakers were kept at a lower level. This Court also found that there was no malice or objectionable motive in the petition filed by the Welfare Association. A definite stand was taken by the Church

that the President of the Welfare Association was a member of RSS and that he had a malicious desire to put an end to the prayers held in the church. The learned Judge found, on a perusal of the complaint and other documents, that at the time when the complaint was preferred, one Parimala Sekaran was the President, one Shabbir, a Muslim was the Vice President, who had preferred the complaint, one Christopher a Christian was the Secretary, the Joint Secretary was a Muslim, the Treasurer was a Christian and the General Adviser was a Hindu. The General Advisor later became the President of the Association. The learned Judge did not find any tinge of malice and malicious wish to cause any hindrance to the free practice of religious faith of the Church.

The Supreme Court confirmed the decision of this Court and approved Appa Rao's case. It observed as follows:
Undisputably no religion prescribes that prayers should be performed by disturbing the peace of others nor does it preach that they should be through voice-amplifiers or beating of drums. In the name of religion nobody can be permitted to add to noise pollution or violate noise pollution norms. Even if there be a religious practice to use voice amplifiers, it should not adversely affect the rights of others including that of being not disturbed in their activities.
"In our view, in a civilized society in the name of religion, activities which disturb old or infirm persons, students, or children having their sleep in the early hours or during day-time or other persons carrying on other activities cannot be permitted. It should not be forgotten that young babies in the neighbourhood are also entitled to enjoy their natural right of sleeping in a peaceful atmosphere. A student preparing for his examination is entitled to concentrate on his studies without their being any unnecessary disturbance by the neighbours. Similarly, old and infirm are entitled to enjoy reasonable quietness during their leisure hours without there being any nuisance of noise pollution. Aged, sick, people afflicted with psychic disturbances as well as children up to 6 years of age are considered to be very sensible to noise. Their rights are also required to be honoured. Under the Environment (Protection) Act, 1986, rules for noise pollution level are framed which prescribe permissible limits of noise in residential, commercial, industrial areas or silence zone. The question is - where the appellant can be permitted to violate the said provisions and add to the noise pollution? In these days, the problem of noise pollution has become more serious with the increasing trend towards industrialization, urbanization and modernization. Noise is having many evil effects including danger to the health. It may cause interruption of sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastro-intestinal problems, allergy, distraction, mental stress and annoyance. This also affect animals alike. The extent of damage depends upon the duration and the intensity of noise. Sometimes it leads to serious law and order problem. Further, in an organized society, rights are related with duties towards others including neighbours. The relevant rules under the Noise Pollution (Regulation and Control) Rules 2000 framed by the Central Government under provisions of the Environment Protection Act, 1986. Rule 3 of the Noise Pollution (Regulation and Control) Rules, 2000 provides for ambient air quality standards in respect of noise for different areas/zones as specified in the Schedule annexed to the rule. Other

relevant rules are:
"4. Responsibility as to enforcement of noise pollution control measures. -
(1) The noise levels in any area/zone shall not exceed the ambient air quality standards in respect of noise as specified in the Schedule.
(2) The authority shall be responsible for the enforcement of noise pollution control measures and the due compliance of the ambient air quality standards in respect of noise.
5. Restrictions on the use of loudspeakers/public address system. -
(1) A loudspeaker or a public address system shall not be used except after obtaining written permission from the authority.
(2) A loudspeaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m. Except in closed premises for communication within, e.g. Auditoria, conference rooms, community halls and banquet halls.

6. Consequences of any violation in silence zone/area. - Whoever, in any place covered under the silence zone/area commits any of the following offence, he shall be liable for penalty under the provisions of the Act:-
(i) whoever, plays any music or uses any sound amplifiers.
(ii) whoever, beats a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrument, or
(iii) whoever, exhibits any mimetic, musical or other performances of a nature to attract crowds.

7. Complaints to be made to the authority -
(1) A person may, if the noise level exceeds the ambient noise standards by 10 dB (A) or more given in the corresponding columns against any area/zone, make a complaint to the authority.
(2) The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules and any other law in force.

8. Power to prohibit etc. Continuance of music sound or noise. -
(1) If the authority is satisfied from the report of an officer in-charge of a police station or other information received by him that it is necessary to do so in order to prevent annoyance, disturbance, discomfort or injury or risk of anno urbance, discomfort or injury to the public or to any person who dwell or occupy property on the vicinity, he may, by a written order issue such directions as he may consider necessary to any person for preventing, prohibiting, controlling or regulating:
(a) the incidence or continuance in or upon any premises of -
(i) any vocal or instrumental music.
(ii) sounds caused by playing, beating, clashing, blowing or use in any manner whatsoever of any instrument including loudspeakers, public address systems, appliance or apparatus or contrivance which is capable of producing or re-producing sound, or
(b) the carrying or in or upon, any premises of any trade, avocation or operation or process resulting in or attended with noise.
(2) The authority empowered under sub-rule (1) may, either on its own motion, or on the application of any person aggrieved by an order made under

sub-rule (1), either rescind, modify or after any such order:
Provided that before any such application is disposed of, the said authority shall afford to the applicant an opportunity of appearing before it either in person or by a person representing him and showing cause against the order and shall, if it rejects any such application either wholly or in part, record its reasons for such rejection."
Further, it is to be stated that because of urbanization or industrialization the noise pollution may in some area of a city/town might be exceeding permissible limits - prescribed under the rules, but that would not be a ground for permitting others to increase the same by beating of drums or by use of voice amplifiers, loudspeakers or by such other musical instruments and, therefore, rules prescribing reasonable restrictions including the rules for the use of loudspeakers and voice amplifiers framed under the Madras Town Nuisance Act, 1889 and also the Noise Pollution (Regulation and Control) Rules, 2000 are required to be enforced. There is lack of awareness among the citizens as well as the Implementation Authorities about the Rules or its duty to implement the same. Noise polluting activities which are rampant and yet for one reason or the other, the aforesaid rules or the rules framed under various State Police Acts are not enforced."

26. In VINAYAGA CHATHURTHIMADHYA KUZHI v.. STATE OF TAMIL NADU [1997 MLJ (Crl) 142] decided by another Division Bench of this Court, consisting of SWAMI, C.J. and LAKSHMANAN, J (as the learned Judge then was), a right to take Vinayaga idol in procession along a particular route was claimed. The Bench held that it was not an absolute right but subject to regulation and imposition of restrictions. The Bench pointed out that the rights guaranteed under Arts.19(1)(b), 25 and 26 of the Constitution of India could not be claimed as absolute rights and observed that any right claimed as absolute right would not be exercisable as there would be no orderliness in exercising such a right and as a result thereof it would affect the rights of the other persons who also enjoyed similar rights that Articles 25 and 26 opened with the words 'subject to public order, morality and health' that temporary orders for prohibition of meeting or procession to prevent imminent breach of peace were reasonable restrictions.

27. In SHAIKHISMAIL SAHIB v.. NIRCHINDA VENKATANRASIMHULU IYAH, AIR 1936 MAD 905 : 71 MLJ 400 : 44 LW 325 : 1936 MWN 976, the plaintiff brought an action for injunction against the defendant for having let his house to people to perform Pujas on which occasions loud music and noise in connection with the ceremonies caused such disturbance as to amount to an actionable nuisance and it was actually found that the noise was such that it prevented the people in the neighbourhood from having proper sleep during nights. It was held that since there could be no doubt that the noise in the case was not produced by ordinary music but by loud and discordant instruments like the tom-tom, cymbals, and so on, and when such noise was made long after the hour when people would ordinarily retire for the night, it should necessarily amount to an actionable nuisance. There were two English decisions referred to by the learned judge. It would be worthwhile to cull out the material portions from those judgments.

28. In COLLS v.. HOME AND COLONIAL STORES LTD. [1904 AC

179] it was observed as follows:
"A dweller in towns cannot expect to have as pure air, as free from smoke, smell and noise as if he lived in the country, and distant from other dwellings and yet an excess of smoke, smell and noise may give a cause of action, but in each of such cases it becomes a question of degree, and the question in each case whether it amounts to a nuisance which will give a right of action."

29. In VANDERPANT v.. MAYFAIR HOTEL CO. LTD. [(1930) 1 CH.D. 138 @ 165], the law on the subject is stated thus:
"Apart from any right which may have been acquired against him by contract, grant or prescription every person is entitled as against his neighbour to the comfortable and healthful enjoyment of the premises occupied by him and deciding whether, in any particular case his right has been interfered with and a nuisance thereby caused, it is necessary to determine whether the act complained of is an inconvenience materially interfering with the ordinary physical comfort of human existence, not merely according to dainty modes and habits of living, but according to plain and sober and simple notions obtaining among English people."

30. In HALSBURY'S LAWS OF ENGLAND - FOURTH EDITION - REISSUE - Volume 38 - Para 610 - it is stated as follows:
"Whether noise constitutes a nuisance is a question of degree. Provided that the level of noise is capable of constituting a nuisance at common law, it is not necessary to establish that a civil action would succeed. Examples of noise held to constitute a nuisance include barking dogs, quarry machinery, overnight use of facilities provided by a garage forecourt, amplified music from a pub and noise made by poultry. Where the noise is caused maliciously, this is taken into account in determining if the noise constitutes a nuisance."

31. English Law provides for an Officer of a local authority to enter and seize, if he has reason to believe that warning notice has been served in respect of noise emitted from a dwelling, and that at any time in the period
specified in the notice and exceeds the permitted level as measured from within the complainant's dwelling.
32. Yet another environmental problem is the burning of things near human habitation and the pollution control has to immediately find means to check this very unhealthy practice.
33. In BAMFORD v. TURNLEY [(1862) 3 B. & S. 66] the plaintiff complained of the smoke and smell arising from the burning of bricks by the defendant on his land not far from the plaintiff's house. At the trial, Lord COCKBURN C.J. directed the jury, on the authority of HOLE v. BARLOW (1858) 4 C.B. (N.S.) 334; 140 E.R. 1113, that if they thought that the spot was convenient and proper, and the burning of bricks was, under the circumstances, a reasonable use by the defendant of his own land, the defendant would be entitled to a verdict, independently of the small matter of whether there was an interference with the plaintiff's comfort thereby. The jury accordingly found a verdict for the defendant. The plaintiff moved for a

rule calling upon the defendant to show cause why a verdict should not be entered for the plaintiff for 40s., but the Court of Queen's Bench refused the rule.

WILLIAMS, J.: .... If it be good law, that the fitness of the locality prevents the carrying on of an offensive trade from being an actionable nuisance, it appears necessarily to follow that this must be a reasonable use of the land. But if it is not good law, and if the true doctrine is, that whenever, taking all the circumstances into consideration, including the nature and extent of the plaintiff's enjoyment before the acts complained of, the annoyance is sufficiently great to amount to a nuisance according to the ordinary rule of law, an action will lie, whatever the locality may be, then surely the jury cannot properly be asked whether the causing of the nuisance was a reasonable use of the land.

POLLOCK C.B. (dissenting): I do not think that the nuisance for which an action will lie is capable of any legal definition which will be applicable to all cases and useful in deciding them. The question so entirely depends on the surrounding circumstances - the place where, the time when, the alleged nuisance, what, the mode of committing it, how, and the duration of it, whether temporary or permanent, occasional or continual - as to make it impossible to lay down any rule of law applicable to every case, and which will also be useful in assisting a jury to come to a satisfactory conclusion: it must at all times be a question of fact with reference to all the circumstances of the case.
Most certainly in my judgment it cannot be laid down as a legal proposition or doctrine, that anything which, under any circumstances, lessens the comfort or endangers the health or safety of a neighbour, must necessarily be an actionable nuisance. That may be a nuisance in Grosvenor Square which would be none in Smithfield Market, that may be a nuisance at midday which would not be so at midnight, that may be a nuisance which is permanent and continual which would be no nuisance if temporary or occasional only. A clock striking the hour, or a bell ringing for some domestic purpose, may be a nuisance, if unreasonably loud and discordant, of which the jury alone must judge; but although not unreasonably loud, if the owner, from some whim or caprice, made the clock strike the hour every 10 minutes, or the bell ring continually, I think a jury would be justified in considering it to be a very great nuisance. In general, a kitchen chimney, suitable to the establishment to which it belonged, could not be deemed a nuisance, but if built in an inconvenient place or manner, on purpose to annoy the neighbours, it might, I think, very properly be treated as one. The compromises that belong to social life, and upon which the peace and comfort of it mainly depend, furnish an indefinite number of examples where some apparent natural right is invaded, or some enjoyment abridged, to provide for the more general convenience or necessities of the whole community; and I think the more the details of the question are examined the more clearly it will appear that all the law can do is to lay down some general and vague proposition which will be no guide to the jury in each particular case that may come before them.

34. So far as Pondicherry is concerned, there is an Act passed amending the Police Act, 1861, in its application to the Union

Territory. The Act is known as the Police (Pondicherry Amendment) Act, 1966 (Act 6 of 1966). Sections 34-A to 34-F have been inserted after Section 34. Section 34-B provides for Penalty for certain offences in public place. Section 34-B (vi) is the relevant Section, which provides as follows:
- whoever, in any public place, -
(vi) playing music, beating tom-tom, etc. - Beats a drum or tom-tom, or blows a horn or trumpet or beats or sounds any brass or other instrument or utensil or plays any music or uses any sound amplifier except at such time and place and subject to such conditions as may be specified in a licence issued in this behalf by the Inspector-General of Police or by any authority authorised in this behalf by him;
shall be punishable with fine which may extend to fifty rupees or with imprisonment for a term which may extend to one month.

NOISE POLLUTION (REGULATION AND CONTROL) RULES, 2000, were notified under Notification No.S.O.123(E), dated 28 February, 2000. The preamble is in the following terms:
"Whereas the increasing ambient noise levels in public places from various sources, inter alia, industrial activity, construction activity, generator sets, loudspeakers, public address systems, music systems, vehicular horns and other mechanical devices have deleterious effects on human health and the psychological well being of the people; it is considered necessary to regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standards in respect of noise."

The other material rules have already been set out from the judgment of the Supreme Court in CHURCH OF GOD in India case.
35. It is a sad reflection on the state of affairs that statutory authorities have to be, very often, told what their duties are.

36. In REGINA v. COMMISSIONER OF POLICE OF THE METROPOLIS, Ex parte BLACKBURN [1968 2 QB 118] it has been stated as follows:
"... mandamus is a very wide remedy which has always been available against public officers to see that they do their public duty. It went in the old days against justices of the peace both in their judicial and in their administrative functions. The legal status of the Commissioner of Police of the metropolis is still that he is a justice of the peace, as well as a constable. No doubt the party who applies for mandamus must show that he has sufficient interest to be protected and that there is no other equally convenient remedy. But once this is shown, the remedy of mandamus is available, in case of need, even against the Commissioner of Police of the Metropolis.
...But the day of reckoning is at hand. .... The law must be sensibly interpreted so as to give effect to the intentions of Parliament; and the police must see that it is enforced. The rule of law must prevail."
SALMON L.J. In my judgment the police owe the public a clear legal duty to enforce the law - a duty which I have no doubt they recognise and which generally they perform most conscientiously and efficiently. In the extremely unlikely event, however, of the police failing or refusing to carry out their duty, the court would not be powerless to intervene.
EDMUND DAVIES L.J. - Thomas Fuller in the seventeenth-century asserted "Be

you never so high, the law is above you". ..... the law enforcement officers of this country certainly owe a legal duty to the public to perform those functions which are the raison d'etre of their existence. How and by whom that duty can be enforced is another matter, and it may be that a private citizen, such as the applicant, having no special or peculiar interest in the due discharge of the duty under consideration, has himself no legal right to enforce it. But that is widely different from holding that no duty exists, enforceable either by a relator action or in some other manner which may hereafter have to be determined.

37. The public interest litigation serves two public purposes - (1) in highlighting the very real anxiety which many responsible citizens manifestly entertain as to the adequacy of the steps hitherto taken to determinate a shocking and growing cancer in the body politic; and (2) in clarifying the duty of the police in relation to law enforcement generally.

38. The Supreme Court in STATE OF M.P. vs.. KEDIA LEATHER & LIQUOR LTD. [(2001) 9 SCC 605] has held that the statutory authorities are required to discharge their functions without there being any directions by the Court in that respect. The Supreme Court has expressed dismay that if the statutory authorities fail to discharge their functions by overlooking apparent defaults, no purpose would be served in maintaining them.

39. Laws alone cannot serve the purpose except increasing the thickness of the statute book, if they are not strictly enforced. As far as implementation of laws is concerned we are still far behind in achieving our goal.

The sanctions are to be rigid and greater responsibilities are to be imposed on authorities to implement laws.

Statutory bodies and government should fulfil their legal mandate.

40. So far as the present case is concerned, the fifth respondent has given an undertaking that he will not apply for permission to play microphone in the private temple within the premises bearing door No.64, Nehru Street, Karaikal. This undertaking, as desired by him, is recorded. In view of the authoritative pronouncement by the Supreme Court in CHURCH OF GOD (FULL GOSPEL) in INDIA's case (supra), and the binding guidelines projected in APPA RAO's case by the Bench of this Court, it is not necessary to restate the role of the authorities under the Police Acts, Municipal Acts and Pollution Acts. Law shall be enforced. Law shall be obeyed.

41. Before parting with the case, I am constrained to make certain observations which may require one to pause and think.

42. Article 51-A was added to the Constitution by the 42nd Amendment Act, 1976 in accordance with the recommendations of Swaran Singh Committee to bring our Constitution in line with Article 29(1) of the Universal Declaration of Human Rights and the Constitutions of Japan, China and the then U.S.S.R, the idea being that the individual should not overlook his duties to the community in exercise of his fundamental rights. The

Committee suggested empowering Parliament to impose punishment for breach of such duties. The suggestion was, however, not accepted while drafting the Bill.

Article 51-A runs as follows:

"It shall be the duty of every citizen of India-

(a) to abide by the Constitution and respect its ideal and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c)to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious; linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement."

43. In the words of the Dr. Durgadas Basu in his Commentary on the Constitution of India:

"The citizen, it is expected, should be his own monitor while exercising and enforcing his fundamental rights, - remembering that he owes the duties specified in Article 51-A to the State and that if he does not care for his duties, he should not deserve the rights. For instance, a person who burns the Constitution, in violation of the duty in Article 51-A(a), cannot assert that the meeting or assembly at which it was burnt by way of demonstration against the Government should be protected by the freedom of expression or assembly guaranteed by Article 19. Of course, the duty as such is not legally enforceable in the Courts; but if the State makes a law to prohibit any act or conduct in violation of any of the duties, the Courts would uphold that as a reasonable restriction on the relevant fundamental right, just as they did uphold any law implementing a Directive Principle under the Constitution of 1949, i.e. before the insertion and expansion of Article 31-C."

44. Liberty is not a personal affair only, but a social contract. It is an accommodation of interests. In matters which do not touch anybody else's liberty, of course, one may be as free as he likes. Such persons have a whole kingdom in which they rule alone, could do what they choose, be wise or ridiculous, harsh or easy, conventional or odd. But when they step out of that kingdom, their personal liberty of action becomes qualified by other people's liberty. A reasonable consideration for the rights or feelings of others is the foundation of social conduct.

(A.G.GARDINER - ON THE RULE OF THE ROAD)

"It is in the small matters of conduct, in the observance of the rule of the road, that we pass judgment upon ourselves, and declare that we are civilised or uncivilised. The great moments of heroism and sacrifice are rare. It is the little habits of commonplace intercourse that make up the great sum of life and sweeten or make bitter the journey."

45. Where do human rights begin? In small places close to home, so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person; the neighbourhood he lives in ..... factory, farm or office where he works. Such are the places where every man and woman and child seeks justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.

46. It is the duty of the State to protect the fundamental right to life of the citizen. In F.C. MULLIN v. ADMINISTRATOR, UNION TERRITORY OF DELHI [(1981) 1 SCC 608]. It has been held as follows:
"The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings... Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live..."

47. Rule of law more than anything else requires that all laws as enacted by Parliament and State Legislatures be faithfully executed by officials, that orders of Courts be obeyed; that individuals wishing to enforce the law should have reasonable access to the Courts; that no person should be condemned unheard, and that power should not be arbitrarily exercised.
[DE SMITH 'JUDICIAL REVIEW OF ADMINISTRATIVE ACTION - Sweet & Maxwell-V Edition - 1998 (1.025)]

48. As one columnist has lamented: In India, we have brilliant well thought out laws in place. But no one enforces them.

49. In our daily lives discipline has been a casuality. There is no discipline in observing the rules - in obeying the laws of the land - on the road there is no discipline - in the bus stop, in the railway station, given the chance we jump the queue - at signals - if the policeman is there we stop if not no - we form several rows of cars there is no road discipline - We are impatient to wait. The VIPs are the worst culprits. They have no rules to follow. They are a law unto themselves. The fatal accidents involving the security personnel accompanying them in escort vehicles have failed to make any impact on them. Their drivers continue to ignore traffic rules. Except in emergencies, they should not be allowed to have the red lights on. The despicable philosophy of 'might is right' should make way to the wholesome 'rule of law'. It is heartening to note that recently one Chief

Minister blew the fuse and banned the use of red lights and sirens by all VVIPs using official and non-official vehicles. Only the Governor and the judiciary have been spared.

50. We cry hoarse about our fundamental rights being affected. How often have we thought of corresponding fundamental duties?

Index: Yes
Internet : Yes
pb

To
1. The Deputy Collector cum
Sub-Divisional Executive Magistrate
Revenue (Taluk Ofice)
Karaikal,
Union Territory of Pondicherry.

2. The Inspector of Police
Law and Order
Karaikal
Union Territory of Pondicherry.

3. The Superintendent of Police
Karaikal
Union Territory of Pondicherry.

4. The Executive Engineer
Electricity Board, Karaikal.